IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

Crl.Rev.Pet.No. 659 of 2000()

CRA.46/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, NEDUMANGAD

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REVN. PETITIONER:

LALAUS, S/O.GAMALIYEL, KIZHAKKUMKARA VEEDU,
NALLIKUZHY, PUTHUKULANGARA MURI,
PARUTHIKUZHY P.O,
UZHAMALAKKAL VILLAGE, NEDUMANGAD TALUK.

BY ADV. SRI.B.JAYASURYA

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE DIRECTOR
OF PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/09/2007, ALONG WITH CRRP NO.761/2000 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.3623/2000 IN CRL.R.P.NO.659/2000

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

14/09/2007

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K.R.UDAYABHANU, J.

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Crl.R.P.Nos.659/2000 & 761/2000

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Dated this the 14th day of September, 2007

O R D E R

The revision petitioner in Crl.R.P.No.659/2000 is the first accused and the revision petitioners in Crl.R.P.No.761/2000 are the second and third accused in C.C.No.137/1992 in the file of the Judicial Magistrate of the First Class-II, Nedumangad, with respect to the offences under Sections 324 and 326 read with Section 34 of the Indian Penal Code, who stand convicted and sentenced to undergo rigorous imprisonment for three months each for the offence under Section 324 read with Section 34 I.P.C and rigorous imprisonment for three months each and to pay a fine of Rs.1000/- each and in default to undergo simple imprisonment for three months each for the offence under Section 326 read with Section 34 I.P.C.

2. The prosecution case is that on 03/04/1991 at about 7.30 a.m., accused No.1 as he was annoyed with PW.1, as PW.1 did not give him the tapping knife, beat PW.1 with an iron rod on the left knee and accused No.2 kicked on his right abdomen and inflicted stab injury above left knee with the pen knife and accused No.3 hit him two-three times with the handle portion of the tapping knife.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 6 and Exts.P1 to P3. Defence examined DW.1 and marked Ext.D1 the portion of the C.D of PW.5.

4. It is submitted that accused No.3 is no more. The counsel has also produced the death certificate in this regard, which would show that on 15/12/2004 he died.

5. Of the occurrence witnesses examined apart from PW.1, the victim, PWs.3 and 5 has supported the prosecution version. PW.4 did not support the prosecution version and was treated as hostile. PWs.1, 3 and 5 have testified in a uniform manner and no contradictions or omissions with respect to their previous statements have been brought out from the evidence of PWs.1 and 3 and, the solitary contradiction in the evidence of PW.5 is not of a material nature. The counsel for the revision petitioners have stressed the fact that there was a delay of eight days in registering the crime and that the Investigating Officer was not examined and further that there was no recovery of the weapons. Evidently, the delay in registering the crime is a serious lapse on the part of the prosecution and on the part of the investigating agency. It is seen that Ext.P1 F.I.S was recorded from the hospital bed

and Ext.P3 wound certificate would show that soon after the incident at about 09.15 a.m on the particular day he was examined by the doctor of the Taluk Head Quarters hospital and the alleged cause mentioned tallies with the prosecution version. PW.6, the doctor who has issued Ext.P3 wound certificate has stated that the accused came to the hospital with the requisition from the police. The lapse on the part of the Investigating Officer is not a ground to discard the prosecution version as such if the rest of the evidence adduced is convincing and credible. The injuries sustained is somewhat serious in nature and the injuries noted in Ext.P3 are:-

"1. Swelling on the lateral side of left leg with fracture of the neck of left fibula.

2. Incised wound 5 cm x ¼ cm skin deep obliquely placed just above the left knee on the medial side of the left thigh.

3. Abrasion 6cm x ¼ cm parallel to and below wound No.2.

4. Lacerated wound 1 ½ cm x ½ cm skin deep at the junction of the upper 2/3 and lower 1/3 of the left shin and contused abrasion 2 x 3 cm on the back of upper part of the left buttock.

Investigation: X-ray showed fracture of left fibula."

6. The appellate court has considered the lapse to examine the Investigating Officer. It is reported that he was laid up affected with paralysis and, hence, the above lapse. Also the above lapse was on account of the above circumstances and cannot be taken to the advantage of the defence. Non recovery of the weapons is not a reason to discard the prosecution version is the settled law.

7. The evidence of PWs.3 and 5, who have supported the prosecution is sought to be impeached on the ground that the above versions are all related to PW.1. On a perusal of the version of the above witnesses, I find that there is no such admission that they are related to PW.1. The relationship is no reason to reject the testimony of the occurrence witnesses if their version is convincing as to their presence at the time of the incident. On a perusal of the evidence of the above witnesses and considering the testimony of PW.1 I find that the versions of the above witnesses are reliable. PW.1 has sustained fracture to the fibula of the left leg and evidently Section 326 I.P.C is attracted. Conviction is confirmed.

8. The counsel for the revision petitioners have pleaded for leniency pointing out that the revision petitioners are poor labourers and further that the incident has taken place about 17 years ago and that so long they were facing the ordeal of the criminal proceedings.

In the circumstances, I find that imprisonment is to be avoided. Hence, the sentence imposed under Section 326 I.P.C is modified to imprisonment till the rising of the court and to pay a fine of rupees fifteen thousand each and in default to undergo simple imprisonment for two months each. The fine amount if realised shall be paid to PW.1. No separate sentence is awarded for the offence under Section 324 I.P.C. The revision petitioners are granted two months time to remit the fine amount. They shall appear before the Judicial Magistrate of the First Class-II, Nedumangad, on 20/11/2007 to receive the sentence.

The criminal revision petitions are disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.Nos.659/2000 & 761/2000

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O R D E R

14th September, 2007